IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3733 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NITABA A GOHIL

Versus

BHAVNAGAR MUNICIPAL CORPORAT.

Appearance:

MR HJ NANAVATI for Petitioner

MR JR NANAVATI for Respondent No. 1

Ms MANISHA LAVKUMAR, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/04/2001

ORAL JUDGEMENT

Rule. Mr JR Nanavati, learned counsel for respondent No. 1 and Ms Manisha Lavkumar, learned AGP for respondent Nos. 2 and 3 waive service of Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. The petitioner applied for the post of primary teacher in a primary school run by the Bhavnagar Municipal Corporation. The petitioner was given an interview call letter dated 29.8.1992 (Annexure "A") calling upon the petitioner to remain present on 14.9.1992 alongwith the original marksheet and certificates with attested true copies thereof. The petitioner accordingly remained present at the interview, but the petitioner could not produce the original marksheet, as according to the petitioner the same was submitted to the State Examination Board for corrections through the institution where the petitioner had undergone her training course in PTC. On 27.11.1992, the Administrative Officer issued the appointment order (Annexure "B") appointing the petitioner as a teacher on temporary post in a primary school run by the respondent Corporation. The appointment order contained certain conditions including the following conditions :-

"2. The petitioner was required to present herself at the place of posting and the petitioner was required to produce the required documents including documents regarding educational qualification and the school was required to furnish those documents to the respondent Corporation alongwith the pay bill.

8. The petitioner was required to report for duty on 14.12.1992 and thereafter at the place of posting failing which the appointment shall be treated as cancelled."

The petitioner admittedly reported for duty on 14.12.1992 but the petitioner could not produce the original marksheet for the reason stated above and, therefore, the petitioner was not permitted to render services. Ultimately, it was only on 15.1.1994 that the petitioner produced the original marksheet and the petitioner thereupon requested the respondents to permit the petitioner to resume her duties and to render her services. However, the Administrative Officer passed order dated 27.8.1996 (Annexure "J") permitting the petitioner to resume her duties subject to the following conditions :-

(i) The conditions imposed in the previous order dated 27.11.1992 remain unchanged.

(ii) The petitioner would get her rights according to the Rules upon resuming duties and no further controversy will be

entertained in future. The petitioner was required to give such an undertaking to the Principal of the school and the Principal was required to keep such undertaking on the record.

The petitioner thereupon sent a letter dated 30.8.1996 (Annexure "K") informing the Administrative Officer that condition No. (ii) was vague and that no such condition was required to be imposed. The petitioner also submitted her joining report dated 30.8.1996, and was permitted to join duty from that date. The petitioner again addressed a letter dated 26.2.1997 (Annexure "L") to the Administrative Officer and to the Chairman of the Primary Education Committee in the respondent Corporation requesting them that since the petitioner was already appointed by the order dated 27.11.1992 and the petitioner had reported for duty on 14.12.1992, the petitioner was entitled to get all the benefits from 14.12.1992. Since the respondents have not granted the said representation, the petitioner has approached this Court.

3. At the hearing of this petition, Mr HJ Nanavati, learned counsel for the petitioner has submitted that there was no fault on the part of the petitioner in not being able to produce the original marksheet as the same was submitted to the State Examination Board; that the petitioner was already appointed by the order dated 27.11.1992 and the petitioner had reported for duty on 14.12.1992 within the time limit stipulated in the appointment order. For the reasons beyond her control, the original marksheet could not be produced before the respondents before 15.1.1994. That cannot take away the petitioner's rights flowing from the appointment order dated 27.11.1992 and, therefore, the petitioner is entitled to be treated as appointed as a teacher with effect from 27.11.1992 or atleast from 14.12.1992 for all purposes including all the monetary benefits.

4. In reply, Mr JR Nanavati, learned counsel appearing for respondent No. 1 has opposed the petition and has submitted that the appointment order issued in November, 1992 imposed the condition upon the petitioner that the petitioner was required to produce the original certificates and since the petitioner did not produce the original marksheet while reporting for duty on 14.12.1992, the petitioner was not entitled to get any benefit on the basis of the said appointment order. It is further submitted that by order dated 27.8.1996 (Annexure "J") it was made clear to the petitioner that

the petitioner will get all the benefits only from the date of resuming duty pursuant to the order dated 27.8.1996 and the petitioner will not raise any dispute in future and that such an undertaking was required to be given by the petitioner. Since the petitioner resumed duty pursuant to the said order, the petitioner must be deemed to have accepted the said condition and, therefore, the petitioner having accepted such order and having resumed duty pursuant to the said order, the petitioner cannot now be permitted to approbate and reprobate for claiming benefits pursuant to the order dated 27.11.1992.

5. Having heard the learned counsel for the parties, it appears to the Court that in a petition under Article 226 of the Constitution, this Court would not like to go into the question as to why so much time was taken by the petitioner and/or by the State Examination Board for making the duplicate copy of the marksheet available, but the fact remains that the marksheet as required by the respondents was produced before the Administrative Officer on 15.1.1994. Till that date the appointment order issued in favour of the petitioner on 27.11.1992 was not cancelled. In fact, the petitioner was permitted to resume duty on the basis of the marksheet produced on 15.1.1994. Respondent No. 1 ought to have permitted the petitioner to resume duty from 15.1.1994 or within a reasonable period shortly thereafter, but respondent No. 1 took more than two years time even for passing the order permitting the petitioner to resume duty. Obviously, the petitioner cannot be blamed for this long lapse of more than two and half years.

6. As regards the argument of Mr Nanavati for respondent No. 1 that the petitioner having accepted the order dated 27.8.1996 and having acted on the basis thereof, the petitioner cannot be permitted to make any claim for getting any benefits for the period prior to 27.8.1996, the argument is misconceived. In the first place, the petitioner did not file any undertaking as required by condition No. 2. Even otherwise, the petitioner cannot be bound by the said condition. What the petitioner had done was all that was within her power by producing the marksheet before the authorities on 15.1.1994. If the respondent authorities took so much time to consider the same and pass an order permitting the petitioner to resume duty, the petitioner cannot be deprived of all the benefits for the intervening period except the monetary benefits which the petitioner may not be granted on the principle of `no work, no pay', but atleast the respondents were required to give the

petitioner benefits of seniority and pay fixation with effect from 15.1.1994.

7. As held by the Apex Court in Central Inland Water Transport Corporation Ltd. vs. Brojo Nath Ganguly & Anr., AIR 1986 SC 1571, the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtained goods or services or means of livelihood only upon the terms imposed by the stronger party party or go without them. It will also apply where a man has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. The types of contracts to which the principle formulated above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the Court. They are opposed to public policy and require to be adjudged void.

8. Examining condition No. (ii) in the order dt. 27.8.1996 (Ann. J), there is no manner of doubt that the Administrative Officer could not have sought to punish the petitioner for the period after 15.1.1994 by depriving her of all the benefits that flew from the appointment order. Hence, respondent No. 1 is directed to grant the petitioner all the benefits flowing from the appointment order dated 27.11.1992 with effect from 15.1.1994. These benefits shall be for the purpose of pension, gratuity and notional pay fixation but not for the purposes of actual payment of salary or arrears of salary and allowance or for the purpose of leave.

9. Rule is made absolute to the aforesaid extent. In view of the fact that the petitioner has been made to file this petition for her rights after 15.1.1994, the respondents shall pay the petitioner costs of this petition which are quantified at Rs. 2,500/- (Rupees Two thousand five hundered only) in one set and to be paid to

the petitioner within two months from today.

(M.S. Shah, J.)
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